CHARLES HOUSE
MRS. LEONARD SKINNER

IBLA 77-450 Decided January 10, 1978

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting mineral patent application N-11872.

Affirmed as modified.

1. Mining Claims: Patent -- Mining Claims: Placer Claims

A single application for patent under the mining laws may not include noncontiguous placer mining claims.

2. Estoppel

Where a BLM employee allegedly misinforms a mining claimant concerning the filing of a patent application, the Government is not estopped from requiring that the resulting error be corrected.

APPEARANCES: James L. Buchanan II, Esq., Las Vegas, Nevada, for Appellants.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Charles House and Mrs. Leonard Skinner (Appellants) have appealed from the May 31, 1977, decision of the Nevada State Office, Bureau of Land Management (BLM), rejecting their mineral patent application, N-11872, for Airway Number One and Airway Number Thirteen placer mining claims because the two claims are not contiguous, and requiring the filing of separate applications for each claim.

[1] Airway Number One placer mining claim is separated by a distance of 2 miles from Airway Number Thirteen placer mining claim,

which is in a different township. For the following reasons, we conclude that BLM acted properly in denying Appellants' application for patent because it concerns two claims which are not contiguous.

In order to rule on an application for patent of a mining claim, the mineral characteristics and potential productivity of the claims must be determined as a critical part of the inquiry into whether there has been a valuable mineral deposit discovered on each claim. Where more than one noncontiguous mining claim is included in one mineral patent application, it is likely that the mineral characteristics and productivity of each constituent claim will be different. The mineral deposits in the claims are unlikely to be associated with the same geological occurrence, due to the geographical separation between the claims. Similarly, the prospects of successful production from each claim may vary. Thus, owing to their geographical separation, the claims are apt to be of disparate natures in aspects critical to the validity of the mineral patent application.

It does not suit convenient administration to consider disparate claims under one application. The casework concept, involving assembly of all information concerning one specific claim, or group of claims, is not suited to the consolidated consideration of two or more tracts of land remote from each other which are likely to be of disparate natures.

Moreover, an application for a mineral patent application must be accompanied by payment of a $ 25 service charge. 43 CFR 3862.1-2, 3863.1(a). Administration of a mineral patent application is necessarily complicated and made more expensive by the inclusion of multiple noncontiguous claims. Field inspections must be made in at least two different geographical locations. Reports on mineral conditions, which are likely to be different at the different locations, must be made at each location. An applicant may not increase the costs of administration of a mineral patent application by including in it multiple noncontiguous mining claims without correspondingly increasing his contribution of service charges toward meeting these costs.

Originally it was the position of the Department that a separate application had to be filed for each claim, regardless of how situated. However, in Smelting Company v. Kemp, 104 U.S. 636 (1881), the Supreme Court construed the statute as permitting contiguous claims to be included in a single patent application. This is the rule followed by the Department ever since. William Dawson, 40 L.D. 17 (1911). See BLM Manual, section 3862 (Rel. 3-38; October 6, 1976). See also Mountain Chief Nos. 8 & 9 Lode Mining Claims, 36 L.D. 100 (1907); Zepher and Other Lode Mining Claims, 30 L.D. 510 (1901); S. F. Mackie, 5 L.D. 199 (1896); Champion Mining Co., 4 L.D. 362 (1886); Good Return Mining Co., 4 L.D. 221 (1885).

Accordingly, we adhere to the long-standing rule that a single application for patent under the mining laws may not include noncontiguous mining claims. Hales and Symons, 51 L.D. 123, 125 (1925); William Dawson, supra; Hidden Treasure Consolidated Quartz Mines, 35 L.D. 485 (1907).

In the instant case, all that is necessary is that Appellants withdraw one of the claims from the pending application (N-11872) and file a separate patent application for that claim, along with an additional $25 service charge. It does not appear to be either necessary or appropriate to reject the pending application in its entirety, and to that extent the decision of the Nevada State Office is modified. Moreover, Appellants should not be expected to republish or to repeat other application steps already taken at the BLM's direction and with its approval.

[2] In their statement of reasons, Appellants suggest that the Government should be estopped from enforcing this separate application rule because an employee of BLM suggested that they file their application in this manner, and because at no time did BLM advise them of this rule, despite constant contact with BLM during the application procedure. This suggestion is without merit. A representation by a Government employee that a rule of law is other than it actually is cannot change the force and effect of that rule, and the Department is not bound by such a representation. The incorrect or unauthorized acts of government employees may not override valid rules. Atlantic Richfield Co. v. Hickel, 432 F.2d 587, 591 (10th Cir. 1970). See Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947); Utah Power and Light Co. v. United States, 243 U.S. 389, 409 (1917); Parker v. United States, 461 F.2d 806 (Ct. Cls. 1972); Administrative Appeal of Joe McComas, 5 IBIA 125, 83 I.D. 227 (1976); Marathon Oil Company, 16 IBLA 298, 81 I.D. 447 (1974); Mark Systems, Inc., 5 IBLA 257 (1972).

BLM is not obligated to make a complete pre-adjudication review of every case, despite inquiries from individuals pressing such cases. Nor is the Government bound by a failure of an employee to be fully apprised of the rules applicable to a case or to inform these persons thereof. 43 CFR 1810.3.

Appellants stress that it was very difficult for them to become aware of the rule applied in this case, owing to the fact that it does not appear in the regulations, and, instead, stems from Departmental case law which has not been set out for over 50 years. There is some merit in this contention, although it does nothing to alter the force of the rule. In view of Appellants' difficulty in being able to become aware of this rule, BLM should attempt to expedite final adjudication of both the pending application and any new one which is filed in consequence of this decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as herein modified.

Edward W. Stuebing
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Martin Ritvo
Administrative Judge